

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION
NO. 04-10994-NMG

PARENTS OF DANIELLE,

Plaintiffs,

v.

MASSACHUSETTS DEPARTMENT OF
EDUCATION ET AL.,

Defendants.

**STATE DEFENDANTS' MOTION TO EXTEND TIME TO
RESPOND TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 7(b) and Local Rule 7.1, defendants Massachusetts Department of Education and Commissioner David Driscoll (collectively referred to as "Department") respectfully move to extend their time to respond to plaintiff's motion for summary judgment, to thirty days following the date on which the Court rules on the pending motion by defendants Sharon School Committee and its members ("Sharon School Committee") to strike plaintiff's motion for summary judgment. The grounds for the motion are set forth below.

DISCUSSION

On July 15, 2005, Sharon School Committee filed a motion to dismiss the Complaint, based on plaintiff's failure to prosecute the action. Plaintiffs, parents of Danielle, filed an opposition to the motion, which is still pending. In the meantime, on December 13, 2005, the plaintiffs filed a motion for summary judgment on Count I of their Complaint, together with a

supporting memorandum of law. The memorandum of law filed in support of the motion for summary judgment is twenty-one pages long, single spaced, in violation of Local Rule 7.1(B)(4); in addition, the memorandum does not include a concise statement of material facts as to which plaintiffs contend there is no genuine issue to be tried.

On December 30, 2005, Sharon School Committee filed a motion to strike plaintiff's summary judgment motion on the ground that it was filed some five months after the deadline established by the Court, and in the alternative, Sharon School Committee submitted a memorandum in opposition to the summary judgment motion. Sharon School Committee's motion to strike plaintiffs' summary judgment motion is pending.

The Department respectfully requests that the Court extend its time to file an opposition to plaintiffs' summary judgment motion, to a date thirty days following the Court's ruling on Sharon School Committee's motion to strike the summary judgment motion. The requested extension of time is reasonable and warranted, in light of the fact that, in the event the Court allows Sharon School Committee's motion to strike, it will be unnecessary for the Department to file a substantive opposition to plaintiffs' motion for summary judgment. In the event that the Court denies the motion to strike, the Department should be allowed 30 days to file an opposition to the summary judgment motion (rather than the fourteen days contemplated by Local Rule 7.1(B)(2)), in light of the voluminous nature of the summary judgment memorandum, which is twenty-one pages, single spaced. As further grounds for this motion for an extension, the undersigned counsel for the Department was out of the office on vacation during most of the period from December 19, 2005 to January 3, 2006, and accordingly was unable to prepare an opposition to summary judgment or to file this motion for an extension at an earlier date.

For the foregoing reasons, the Department respectfully requests that the Court extend its time to file an opposition to plaintiffs' motion for summary judgment, to a date thirty days following the Court's ruling on Sharon School Committee's motion to strike the summary judgment motion.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ Amy Spector

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Dated: January 9, 2006

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

I certify that I have conferred with counsel for plaintiffs and counsel for defendant Sharon School Committee prior to the filing of this motion, both of whom do not oppose the extension requested in this motion.

/s/ Amy Spector

Amy Spector
Assistant Attorney General